



# #6

DEPARTMENT OF BUILDING AND DEVELOPMENT  
STAFF REPORT

## BOARD OF SUPERVISORS PUBLIC HEARING

**DATE OF HEARING:** ~~February 7, 2011~~ (Postponed)

**CASE NUMBER/CASE NAME:**  
**ZOAM 2010-0004, Large Retail Establishments**

**DECISION DEADLINE:** At the Pleasure of the Board

**DEPARTMENT DIRECTOR:** Terrance Wharton, Building and Development

**ELECTION DISTRICT:** Countywide

**PROJECT PLANNERS:** Michelle Lohr  
Marilee Seigfried

### EXECUTIVE SUMMARY

On September 1, 2009, the Board of Supervisors adopted a Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance (the “Revised 1993 Zoning Ordinance”) to require retail establishments of greater than 75,000 square feet to obtain special exception approval. (Attachment 1)

The proposed amendments to the Revised 1993 Zoning Ordinance “ZOAM 2010-0004”) would: (1) amend the permitted and special exception use lists for the RC (Rural Commercial), Planned Development Commercial Center--Community Center (PD-CC-CC), Planned Development--Commercial Center--Small Regional Center (PD-CC-SC), Planned Development--Commercial Center--Regional Center (PC-CC-RC), Planned Development--Town Center (PD-TC), Planned Development--Transit Related Employment Center (PD-TREC), Planned Development--Transit Related Center (PD-TRC), and Planned Development--Mixed Use Business District (PD-MUB) zoning districts to establish that certain Construction retail establishments<sup>1</sup> and Retail sales establishments, including, without limitation, Food stores, and Pharmacies, that exceed 75,000 square feet shall be permitted only by Special Exception; (2) establish new Additional Regulations Section 5-661 to establish locational and site development criteria and exterior lighting, noise, landscaping/buffering/screening, and parking standards for such Special Exception uses; and 3) amend Article 8, *Definitions*, to revise the definitions of “Retail Sales Establishment”, “Food Store”, “Retail, Construction Establishment”, and other definitions and add new definitions for “Retail sales establishment (large)” and “Retail, construction establishment (large)”. The draft text of ZOAM 2010-0004 is contained in Attachment 2.

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<sup>1</sup>“Retail, Construction Establishment” is defined in Article 8 of the Revised 1993 Loudoun County Zoning Ordinance as “Buildings or land used for sale of construction materials at retail or for the rendering of construction services including, but not limited to, coal, wood, and lumber yards.”

## I. RECOMMENDATIONS

**Planning Commission:** The Planning Commission's public hearing on the matter was scheduled for January 26, 2011. An update will be provided to the Board of Supervisors under separate cover summarizing the Planning Commission's public hearing and any forthcoming recommendation of the Planning Commission.

**Staff:** Depending on the outcome of the Planning Commission public hearing and subsequent recommendation, Staff recommends that the Board of Supervisors adopt the draft text of ZOAM 2010-0004 as contained in Attachment 2.

## II. SUGGESTED MOTIONS

1. I move that the Board of Supervisors forward ZOAM 2010-0004, Large Retail Establishments, to amend certain Sections of the Revised 1993 Loudoun County Zoning Ordinance in regard to certain retail sales uses in excess of 75,000 square feet, as contained in Attachment 2, Pages A3-A30 to the March 1, 2011 Business Meeting for action.

OR

2. I move that the Board of Supervisors forward ZOAM 2010-0004, Large Retail Establishments, to amend certain Sections of the Revised 1993 Loudoun County Zoning Ordinance in regard to certain retail sales uses in excess of 75,000 square feet, as contained in Attachment 2, Pages A3-A30, to the Transportation and Land Use Committee for further discussion.

OR

3. I move an alternative motion.

## III. BACKGROUND

ZOAM 2010-0004 was initiated by the Board of Supervisors at its November 18, 2008 Business Meeting and the original proposal presented at that meeting was used as a basis for draft text of ZOAM 2010-0004. On June 16, 2009, the Board of Supervisors directed Staff to prepare a Resolution of Intent to Amend the Revised 1993 Zoning Ordinance in order to manage the size of large retail establishments by requiring special exception approval for retail sales establishments in excess of 75,000 square feet. On September 1, 2009, the Board of Supervisors voted 7-2 (Waters and Delgaudio opposed) to approve a Resolution of Intent to Amend the Revised 1993 Zoning Ordinance to require a special exception for any retail establishment of greater than 75,000 square feet. [The Copy Teste of the September 1, 2009 Board of Supervisors Business Meeting is included in Attachment 1. The Staff Report for the September 1, 2009 Board of Supervisors Business Meeting is available on-line at [www.loudoun.gov/lola](http://www.loudoun.gov/lola) (ZOAM 2010-0004, See Document "2009-09-01 BOS ROIA STFRPT.PDF").]

At its October 19, 2010, Business Meeting the Board of Supervisors discussed the timeline for the review of ZOAM 2010-0004 and directed staff to bring the item to the Planning Commission's January Public Hearing. This direction was restated by the Board of Supervisors at its November 3, 2010, Business Meeting at which time staff was directed to "double-advertise" the Planning Commission's Public Hearing and the Board of Supervisors' February Public Hearing with the understanding that if the Planning Commission decides that more time is

necessary to review ZOAM 2010-0004, the Board of Supervisors' Public Hearing on the amendments would be postponed or action on the item would be delayed until a recommendation is received from the Planning Commission.

The Planning Commission Public Hearing was scheduled for January 26, 2011. An update summarizing the Planning Commission's Public Hearing will be sent to the Board of Supervisors under separate cover.

#### IV. APPLICABILITY

Pursuant to *Code of Virginia* § 15.2-4603.C and Section 1-103(N) of the Revised 1993 Loudoun County Zoning Ordinance, commercially and industrially zoned parcels located in the Route 28 Transportation Improvement District (the "Route 28 District") are governed either by the 1972 Loudoun County Zoning Ordinance (the "72 Zoning Ordinance"), which was in effect when the Route 28 District was created, or by the version of the 1993 Loudoun County Zoning Ordinance (the "93 Zoning Ordinance") or the Revised 1993 Zoning Ordinance in effect as of the date of the most recent change in zoning of such parcel. Therefore, ZOAM 2010-0004 will not apply to any commercially or industrially zoned parcels located within the Route 28 District unless there is a subsequent change in the zoning of such parcel (the effect of which would bring the parcel under the most current version of the Revised 1993 Zoning Ordinance, including ZOAM 2010-0004 if it is approved).

The County's existing large retail establishments were developed on parcels that are located within the PD-CH (Planned Development-Commercial Highway) and PD-SC (Planned Development-Shopping Center) zoning districts under the 72 Zoning Ordinance, or the PD-CC-SC (Planned Development-Commercial Center-Small Regional Center) and PD-CC-RC (Planned Development-Commercial Center-Regional Center) zoning districts under the 93 Zoning Ordinance or the Revised 1993 Zoning Ordinance. Parcels zoned PD-CH and PD-SC are located in the Route 28 District, which, as stated above, will not be affected by ZOAM 2010-0004. Parcels zoned PD-CC-SC and PD-CC-RC are either also located in the Route 28 District (and will not be affected by ZOAM 2010-0004), or were developed pursuant to proffered rezoning and may or may not be affected by ZOAM 2010-0004 depending on case-by-case analysis of numerous factors related to vesting under Virginia law. Attachment 3 illustrates the location of the above mentioned zoning districts.

#### V. EXISTING REQUIREMENTS FOR RETAIL

The Revised 1993 Zoning Ordinance currently lists retail establishments, which, depending on the subject zoning district's regulations may or may not include the uses "Retail sales establishment", "Food store", "Pharmacy" and "Construction retail establishment" as permitted (by-right) uses in the RC, PD-CC-NC, PD-CC-CC, PD-CC-SC, PD-CC-RC, PD-TC, PD-TREC, PD-TRC, and PD-MUB zoning districts. Only in the Commercial Light Industry (CLI) zoning district are retail sales establishments currently permitted solely by special exception. Attachment 4 lists the zoning districts that permit retail establishments and the specific retail uses that are permitted in those zoning districts.

Currently, the regulations for the PD-CC-CC, PD-CC-SC, PD-CC-RC, PD-TC, PD-TREC, PD-TRC, and PD-MUB zoning districts do not specify maximum size requirements for retail uses, except that: (1) the regulations for the PD-TREC zoning district (a) establish a 15,000 square

foot maximum size for single-story retail uses located in the Inner Core and Outer Core Subareas, and (b) requires a special exception for any Food store greater than 10,000 square feet located within the Outer Core Subarea; (2) the regulations for the PD-TRC zoning district require a special exception for any retail use in excess of 10,000 square feet excluding Food stores, located within the Transit Designed Supportive Area subarea. Further, the regulations for the PD-CC-NC and RC zoning districts require a special exception for any one use (including retail uses) in excess of 5,000 square feet and 10,000 square feet respectively.

Currently, no specific standards for retail uses are specified by the Revised 1993 Zoning Ordinance. Thus, only the general zoning district regulations and parking and screening requirements apply to such uses. Only in those zoning districts where a special exception is required for retail uses or for uses exceeding certain size limits may conditions be approved to help mitigate the potential impacts of such retail uses.

## VI. SUMMARY OF PROPOSED TEXT CHANGES

The following is a brief description of ZOAM 2010-0004. Attachment 2 includes the specific text of ZOAM 2010-0004.

- A. Revise the use lists for certain zoning districts to require Special Exception approval for retail uses in excess of 75,000 square feet.

Revise the use lists in RC, PD-CC-CC, PD-CC-SC, PD-CC-RC, PD-TC, PD-TREC, PD-TRC, and PD-MUB zoning districts to distinguish between permitted retail uses and large retail uses permitted by special exception.

- B. Establish Section 5-661, Additional Regulations for Retail Sales Establishment, Large.

Establish additional regulations for Retail Sales Establishment, Large, as follows:

- (1) The use must be compatible with the surrounding area, particularly with regard to traffic circulation, parking, buffering, and appearance.
- (2) Scale, massing, and building design shall be compatible with surrounding developments.
- (3) The building shall be oriented toward the street with pedestrian entrances from the street.
- (4) Architectural detailing shall be incorporated into all façades so as to avoid a blank or monotonous appearance on any façade
- (5) Loading areas shall be sited in such a way so as to minimize the impact on any surrounding neighborhood and shall not be visible from the street.
- (6) Parking shall be located behind the front line of the principal building.
- (7) All business, service, storage, and display of goods shall be conducted within a completely enclosed building.

Pursuant to Section 5-600, the Board of Supervisors, through the Minor Special Exception process, may modify any of the above requirements based upon certain findings.

- C. Amend Article 8, Definitions of Retail Sales Establishment, Food Store, and Construction Retail Establishment.

Amend the definitions of Retail Sales Establishment, Food Store, and Construction Retail Establishment to clarify that a special exception is required if such uses are in excess of 75,000 square feet.

D. Establish Definition of Retail Sales Establishment (large) and Construction Retail Establishment (large).

Establish definitions for Retail Sales Establishment (large) and Construction Retail Establishment (large), to specify that these uses are in excess of 75,000 square feet and are subject to the Additional Regulations of Section 5-661.

## VII. COUNTY AGENCY INPUT

Comprehensive Planning. The Department of Planning ("Community Planning") provided comments on ZOAM 2010-0004 that are included in Attachment 5. The Loudoun County General Plan (revised July 23, 2001, as amended) (the "Revised General Plan") provides the basis for evaluating land development proposals, is a foundation for amendments to the Revised 1993 Zoning Ordinance, and ensures that the County's goals are implemented through the regulatory process. The policies of the Revised General Plan generally limit the development of large retail uses within the County to areas located within a Destination Retail Area or Destination Retail Overlay, or designated for Hybrid Retail Center uses, as shown on Planned Land Use maps (Attachments 6 and 7). Community Planning comments that large retail uses typically demand a regional market and rely almost solely on automobile access. Thus, large retail uses are planned to be located along planned and future principal arterial corridors where the County's transportation network can best accommodate auto intensive retail uses. The policies of the Countywide Retail Policy Plan Amendment ("Retail Plan") pertaining to Corridor-Based Retail uses focus on mitigating the negative impacts of large retail development, accommodating new retail forms such as big box retail and warehouse clubs, and expanding opportunities for appropriate retail development in industrial areas. "The Retail Plan further anticipates a high quality architectural design for proposed retail developments, including the provision of recesses and offsets to reduce the building massing; a preference for pitched, mansard, and other distinctive roof forms; the screening of rooftop and/or ground-mounted mechanical equipment; and the provision of measures to provide pedestrian weather protection, such as a continuous arcade."

Community Planning also comments that a requirement for retail uses larger than 75,000 square feet to obtain Special Exception approval would not conflict with the policies outlined in the Revised General Plan or the Retail Plan. Further, the location criteria, site development criteria, and design standards proposed as Additional Regulations for such retail uses by ZOAM 2010-0004 would conform to the design guidelines as outlined in the Retail Plan and would help facilitate compatible retail design. Staff points out that as currently drafted, ZOAM 2010-0004 will apply not only to freestanding, destination retail uses, but also to anchor stores, including grocery stores within residential community shopping centers. Staff notes that currently, in order to establish a new large retail use, in most cases a parcel is required to rezone to a commercial zoning district, a process that only enables the Board of Supervisors to negotiate proffers in order to mitigate the potential impacts of the project. A benefit of the special exception process would be that the Board of Supervisors could address compatible design concerns through conditions of approval, rather than relying solely on proffers.

Department of Economic Development. The Department of Economic Development ("Economic Development") provided comments on ZOAM 2010-0004 that are included in Attachment 8. Economic Development comments that retail is important in communities to provide nearby jobs, amenities, and shopping. Big box stores (large retail establishments) are often critical for the overall success of the business model of a shopping center. Economic Development cautions that additional zoning restrictions may serve as a disincentive to large retail establishments locating within the County. The approval of ZOAM 2010-0004 could affect the eventual redevelopment of older existing shopping centers because of the time and resource consuming nature of the special exception process and could result in extended periods of time where large stores sit vacant because of difficulty in recruiting new tenants.

Economic Development recommends establishing administrative standards rather than requiring the legislative special exception process.

## VIII. ISSUES

- A. Applicability of ZOAM 2010-0004 (within the Route 28 District). Pursuant to *Code of Virginia* § 15.2-4603.C and Section 1-103(N) of the Revised 1993 Zoning Ordinance, commercially and industrially zoned parcels located within the Route 28 District are governed either by the 72 Zoning Ordinance, which was in effect when the Route 28 District was created, or by the version of the 93 Zoning Ordinance or the Revised 1993 Zoning Ordinance in effect as of the date of the most recent change in zoning of such parcel. Therefore, ZOAM 2010-0004 will not be apply to any commercially or industrially zoned parcels in the Route 28 District unless there is a subsequent change in zoning to such parcel (the effect of which would bring the parcel under the most current version of the Revised 1993 Zoning Ordinance, including ZOAM 2010-0004 if it is approved). Developments that contain large retail uses that have developed in the Route 28 District that would not be affected by ZOAM 2010-0004 include: Dulles Town Center, Dulles Town Crossing and Dulles 28 Center, Potomac Run Plaza, Costco, and Regal Plaza/Park City Center.
- B. Effect of ZOAM 2010-0004 on proffered rezonings (outside the Route 28 District). The effect of ZOAM 2010-0004 on proffered rezonings would have to be evaluated on a case-by-case basis. Such proffered rezoning may or may not be affected by ZOAM 2010-0004 depending on an analysis of numerous factors related to vesting under Virginia law. For example, in general ZOAM 2010-0004 may not apply to proffered developments that specified large retail uses on their proffered concept development plans. However, ZOAM 2010-0004 may apply if large retail uses were not specified in the proffers and the proffered concept development plan simply stated that "retail" was to be developed.

Examples of developments that have approved concept development plans that specified large retail uses are Dulles Landing and Arcola Center (both located north of John Mosby Highway (Route 50) and west of Loudoun County Parkway (Route 607)). Dulles Landing comprises approximately 800,000 square feet and includes two individual tenants that each exceed 75,000 square feet, including a 203,000 square foot WalMart. Arcola Center comprises approximately 660,000 square feet and includes a 185,000 square foot Target and a 139,000 square foot Lowes.

Additionally, three smaller developments with approved concept development plans that may specify large retail are located south of Route 50. These developments are: 1) East

Gate Two approved for approximately 203,000 square feet of retail and office uses (the proffered Design Guidelines include elements such as building compatibility, design, massing and screening); 2) Avonlea Plaza approved for approximately 300,000 square feet of retail uses (the proffered concept plan depicts potential large retail); and 3) Stone Ridge North Retail Center approved for approximately 300,000 square feet (site plans have been approved for approximately 143,000 square feet).

- C. Applicability of Special Exception Requirement to Existing Large Retail Uses. Pursuant to Section 1-103(F)(2) of the Revised 1993 Zoning Ordinance, any lawfully existing use which shall become a special exception use shall be deemed to have special exception approval. Thus, if ZOAM 2010-0004 is adopted, existing retail sales establishments (including food stores and pharmacies) and construction retail establishments in excess of 75,000 square feet would be permitted to continue as if they already had received special exception approval. Hypothetically, the use would be able to continue, as any other special exception and would be considered permanent, unless an expiration was imposed on the use as a condition of approval. As special exception uses are typically subject to a special exception plat, the existing retail use that is deemed to have special exception approval would be permitted to continue as though they were subject to a special exception plat that specifically located the use in a precise location. Thus, again hypothetically, if torn down, the property owner would be able to rebuild within the exact footprint of the building that existed on the effective date of ZOAM 2010-0004 with no enlargement, no expansion, and no relocation unless a new special exception was approved by the Board of Supervisors
- E. Conditions on Special Exception Uses. In those zoning districts that currently require a special exception for retail uses, the Board of Supervisors may impose conditions, including any or all of the proposed Additional Standards of Section 5-661, whether or not the use is in excess of 75,000 square feet.

## IX. FISCAL IMPACT

There are no direct fiscal impacts associated with this amendment.

## X. ZONING ORDINANCE CRITERIA FOR APPROVAL

Section 6-1211(D) of the Revised 1993 Zoning Ordinance states "...for an amendment to the text of this Ordinance, the Planning Commission shall consider the following matters...":

Standard: *Whether the proposed text amendment is consistent with the Comprehensive Plan.*

Analysis: The proposed text amendments are consistent with the Comprehensive Plan.

Standard: *Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.*

Analysis: The intent of the Revised 1993 Zoning Ordinance is defined under Section 1-102, which states: "*This Ordinance is enacted in order to promote the health, safety and welfare of the residents of Loudoun County and to implement the Loudoun County Comprehensive Plan.*" ZOAM 2010-0004 is consistent with the intent and purpose of the Revised 1993 Zoning Ordinance.

**XI. ATTACHMENTS**

<b>Number</b>	<b>Description</b>	<b>Page</b>
1.	Copy Teste and Resolution of Intent to Amend the Zoning Ordinance, September 1, 2009.	A1-A2
2.	Proposed Zoning Ordinance Amendments, revised through 1/14/11.	A3-A30
3.	Location of PD-CC-SC, PD-CC-RC, PD-CH, PD-SC Zoning districts	A31
4.	List of districts permitting retail	A32
5.	Referral, Community Planning, Department of Planning	A33-34
6.	Planned Land Use Map	A35
7.	Planned Land Use Map (Arcola/Route 50)	A36
8.	Referral, Department of Economic Development	A37-38